

Part 2

Venue for Probate and Administration - Priority to Administer - Demand for Notice

75-3-201 Venue for first and subsequent estate proceedings -- Location of property.

- (1) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is:
 - (a) In the county where the decedent had his domicile at the time of his death.
 - (b) If the decedent was not domiciled in this state, in any county where property of the decedent was located at the time of his death.
- (2) Venue for all subsequent proceedings involving administration and distribution of decedent's estates is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in Subsection (3) of this section or in Section 75-1-303.
- (3) If the first proceeding was informal, on application of an interested person and after notice to the proponent in the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to the other court.
- (4) For the purpose of aiding determinations concerning location of assets which may be relevant in cases involving nondomiciliaries, a debt, other than one evidenced by investment or commercial paper or other instrument in favor of a nondomiciliary, is located where the debtor resides, or if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper, and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.

Enacted by Chapter 150, 1975 General Session

75-3-202 Appointment or testacy proceedings -- Conflicting claim of domicile in another state.

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the formal testacy or appointment proceeding in this state.

Enacted by Chapter 150, 1975 General Session

75-3-203 Priority among persons seeking appointment as personal representative.

- (1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:
 - (a) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;
 - (b) the surviving spouse of the decedent who is a devisee of the decedent;
 - (c) other devisees of the decedent;
 - (d) the surviving spouse of the decedent;
 - (e) other heirs of the decedent;
 - (f) 45 days after the death of the decedent, any creditor.

- (2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in Subsection (1) apply except that:
 - (a) If the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
 - (b) In case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than one-half of the probable distributable value, or, in default of this accord, any suitable person.
- (3) A person entitled to letters under Subsections (1)(b) through (1)(f) and a person aged 18 and over who would be entitled to letters but for his age, may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them or in applying for appointment in informal proceedings. When two or more persons share a priority, any one or more of them who do not renounce may nominate another to act or apply for appointment in formal proceedings. Before appointing fewer than all persons who share a priority and who have not renounced or nominated another, the court must determine that those sharing the priority, although given notice of the formal proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.
- (4) Conservators of the estates of protected persons, or if there is no conservator, any guardian, except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.
- (5) Appointment of one who does not have priority under Subsection (1) or priority resulting from renunciation or nomination determined pursuant to this section may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.
- (6) No person is qualified to serve as a personal representative who is:
 - (a) under the age of 21;
 - (b) a person whom the court finds unsuitable in formal proceedings.
- (7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.
- (8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

Amended by Chapter 226, 1983 General Session

75-3-204 Demand for notice of order or filing concerning decedent's estate.

Any interested person desiring notice of any order or filing pertaining to a decedent's estate may file a demand for notice with the court at any time after the death of the decedent stating the name of the decedent, the nature of his interest in the estate, and the demandant's address or that of his

attorney. The clerk shall mail a copy of the demand to the personal representative if one has been appointed. After filing of a demand, no order or filing to which the demand relates shall be made or accepted without notice as prescribed in Section 75-1-401 to the demandant or his attorney. The validity of an order which is issued or filing which is accepted without compliance with this requirement shall not be affected by the error, but the petitioner receiving the order or the person making the filing may be liable for any damage caused by the absence of notice. The requirement of notice arising from a demand under this provision may be waived in writing by the demandant and shall cease upon the termination of his interest in the estate.

Amended by Chapter 226, 1983 General Session